IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13890 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADEJA MANSINH UDESINH - Petitioner(s)

Versus

PUJARA MULABHAI AMARABHAI & 6 - Respondent(s)

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Appearance :

MR JV JAPEE for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1, 2, 3, 4, 5, 6,7.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 17/08/2005

ORAL JUDGMENT

1. Instant petition under Article 227 of the Constitution of India is directed against the judgment and order dated 5.8.2004 rendered in

C.A.F.O. No.15 of 1999 by the learned 2nd Joint District Judge, Sabarkantha at Himatnagar by which the appeal filed by respondent Nos.1 to 5 herein came to be allowed and thereby the order dated 12.1.1999 recorded below application Ex.35 in RCS No.88 of 1997 by the learned Civil Judge (S.D.)., Himatnagar, directing the respondents to undergo civil imprisonment for one month for committing breach of the order of injunction recorded by the learned trial Judge has been quashed and set aside. The order further directed the trial court to frame preliminary issue in respect of the ownership of the suit land under the provisions of Order 14 Rule 2 (1) of the Code of Civil Procedure ('the Code' for short) and also the petitioner was ordered to pay exemplary cost of Rs.500/- to the respondents within one month from the date of the order.

2. According to the case of the petitioner, he and respondent Nos.1 to 6 are joint owners of the agricultural land bearing Revenue Survey No. 204 of village Dehgamda. The petitioner is having 50% share whereas respondent Nos.1 to 6 are having 50% share in the land. The petitioner has been cultivating the suit land of his share for the last ten years. The petitioner has been also cultivating the land in the share of respondent

Nos.1 to 6 as Ganotiya for the last ten years. Thus the petitioner is occupying and cultivating the entire Revenue S.No.204 for the last ten years.

3. According to the petitioner, since respondent Nos.1 to 6 were likely to sell share of their land to respondent No.7, the petitioner has filed RCS No.88 of 1997 before the learned Civil Judge (SD), Himatnagar for declaration and permanent injunction. Along with the suit the petitioner has also filed application seeking interim injunction restraining the respondents from transferring or alienating land during the pendency of the suit.

4. The learned trial Judge had passed order on 6.11.1997 directing the respondents to maintain status on the land till disposal of the suit. (The learned trial Judge passed he said order on the basis of the pursis Ex.33 presented by the learned advocates appearing for both the parties.)

5. The aforesaid order of status quo was not challenged by the respondents before the higher forum and the same has become final during the pendency of the suit.

6. According to the petitioner, thereafter the respondents have disposed of the part of the land to one Jadeja Gajaraba Kanusinh by registered sale deed in disregard of the order of status quo operating against them. When the petitioner came to know about the said transaction, he filed application under Order 39 Rule 2-A of the Code to take action against respondents Nos.1 to 6 for committing breach of the injunction by submitting application Ex.35.

7. The learned trial Judge after considering the record and proceedings of the case and after perusing the order passed below application Ex.5 directing the parties to maintain status quo and also after hearing the learned advocates appearing for the parties, came to the conclusion that the respondents have committed breach of the order passed by the Court and disposed of the property to one Jadeja Gajaraba Kanusinh by registered sale deed dated 4.12.1997 in consideration of Rs.50,000/- and therefore they have committed breach of the order issued against them.

8. On the basis of the aforesaid finding, the learned trial Judge in

exercise of powers under Order 39 Rule 2 (A) and also under Section 151 of the Code passed an order on 12.1.1999 and sentenced the respondents to undergo civil imprisonment for a period of one month.

9. Aggrieved thereby the respondent Nos.1 to 5 filed CAFO No.15 of 1999 before the District Court, Sabarkantha at Himatnagar. The said appeal was placed for hearing before the learned 2nd Joint District Judge, Sabarkantha at Himatnagar who vide judgment and order dated 5.8.2004 allowed the appeal and thereby quashed and set aside the order dated 12.1.1999 recorded below application Ex.35 in Regular Civil Suit No.88 of 1997 and also ordered the trial court to frame preliminary issue regarding maintainability of the suit in respect of the ownership of the suit land by framing preliminary issue under Order 14 Rule 2 (a) of the Code and also directed the petitioner to pay exemplary cost of Rs.500/- to the respondents which has given rise to the present petition.

10. This Court has considered the submissions advanced by Mr. JV Japee, learned advocate of the petitioner, perused the impugned judgment and order recorded in CAFO No.15 of 1999 by the learned 2nd Joint District Judge, Sabarkantha at Himatnagar as well as order dated

6.11.1997 recorded below application Ex.5 in RCS No.88 of 1997 by the learned Civil Judge (S.D.), Himatnagar.

11. There is no dispute that the petitioner herein has filed RCS No.88 of 1997 before the learned Civil Judge (S.D.)., Himatnagar for declaration and permanent injunction, inter alia, contending that he and respondent Nos.1 to 6 are joint owners of the agricultural land bearing Revenue Survey No. 204 of village Dehgamda. The petitioner is having 50% share whereas respondent Nos.1 to 6 are having 50% share in the land. The petitioner has been cultivating the suit land of his share for the last ten years. The petitioner has been also cultivating the land in the share of respondent Nos.1 to 6 as Ganotiya for the last ten years. Thus the petitioner is occupying and cultivating the entire Revenue S.No.204 for the last ten years. According to the case of the petitioner, since respondent Nos.1 to 6 were likely to sell share of their land to respondent No.7, the petitioner has filed the suit for declaration and permanent injunction.

11.1. Along with the suit an application seeking interim injunction restraining the respondents from transferring or alienating land during the pendency of the suit was also moved by the petitioner. On the said

application, on the basis of the pursis Ex.33 presented by the learned advocates appearing for the parties, the trial court has passed order below application Ex.5 directing both the parties to maintain status quo with regard to the suit property till disposal of the suit.

11.2. It may be noted that the said order has become final during the pendency of the suit as it was not challenged by the respondents before higher forum.

11.3. There is no dispute that the respondents have thereafter disposed of a part of the land to one Jadeja Gajaraba Kanusinh by registered sale deed dated 4.12.1997 in consideration of Rs.50,000/- in disregard of the order of status quo operating against them. The petitioner, therefore, filed application Ex.35 under Order 39 Rule 2-A of the Code to take action against respondent Nos.1 to 6 for committing breach of the injunction.

11.4. On that application, the learned trial Judge has passed order directing the respondents to undergo civil imprisonment for one month for committing breach of the order of injunction.

11.5. Aggrieved thereby respondent Nos.1 to 5 carried the matter in appeal before the District Court, Sabarkantha at Himatnagar. The said appeal was heard by the learned 2nd Joint District Judge, Sabarkantha at Himatnagar and the said appeal came to be allowed and thereby the order recorded below Ex.35 by the learned Civil Judge (SD), Himatnagar is quashed and set aside with a direction to the trial court to frame preliminary issue in respect of the ownership of the suit land.

12. In the aforesaid factual backdrop which have remained uncontroverted, according to this Court, the learned 2nd Joint District Judge has committed a jurisdictional error by going behind the order of status quo although the respondents had not filed any appeal against the said order. It may be noted that the learned 2nd Joint District Judge was dealing with the appeal against the order punishing the respondents for breach of injunction. Therefore, he had no jurisdiction to examine the legality and validity of the earlier order of status quo which was not challenged by the respondents.

13. The learned 2nd Joint District Judge has erroneously came to the conclusion that the petitioner was owner of only ½ part of Revenue

Survey No.204 and therefore the respondents were entitled to sell the remaining ½ share of their ownership and, therefore, the entire suit is illegal and the status quo order was wrongly obtained. According to this Court, the learned 2nd Joint District Judge has failed to appreciate the fact that the status quo order was in respect of the entire Revenue Survey No.204, a part of which was owned by the petitioner and another part of which was cultivated by him as a tenant. Even otherwise, the learned 2nd Joint District Judge cannot go behind the order of status quo which was not challenged by the respondents.

14. According to this Court, the learned 2nd Joint District Judge has also committed a substantial error of jurisdiction by holding that the word "status quo" does not come within the purview of the word "order" and, therefore, the provisions of Order 39 Rule 2-A of the Code is not applicable. It may be noted that status quo order is very much an order and it does come within the purview of the provisions of Order 39 Rule 2-A of the Code if there is breach of the said order. In the instant case, there is a clear breach of the said order by disposing of the suit land and, therefore, there was a clear contempt of the order of the Court as the respondents have not acted as per the pursis and order passed on the basis

of the said pursis.

15. The learned 2nd Joint District Judge has held that the suit itself is not tenable and the preliminary issues should be framed regarding the ownership of the suit land. According to this Court, the aforesaid finding itself is erroneous and, therefore, the learned 2nd Joint District Judge has committed a jurisdictional error in holding the entire suit as not maintainable while dealing with the appeal against the order punishing the respondents for breach of injunction. It is also required to be appreciated that the learned 2nd Joint District Judge has decided the suit in an appeal filed under Order 43 Rule 1 (r) of the Code where the jurisdictional sweep is very limited confined only to examine the order which was impugned before him. He had no jurisdiction to give direction to frame preliminary issue at this stage without there being any application for the same from the respondents. Apart from this, such an application for framing issue regarding the ownership of the suit land does come within the purview of Order 14 Rule 2 (1) of the Code. Therefore, according to this Court, the learned 2nd Joint District Judge has committed serious illegality and infirmity and also jurisdictional error in passing the impugned order.

16. By the impugned order, the learned trial 2nd Joint District Judge has also directed the petitioner to pay exemplary cost of Rs.500/- to the respondents, which, according to this Court, is not only absolutely erroneous and perverse but contrary to the statutory provisions contained under Section 35-A of the Code. On having look at Section 35-A of the Code, it in terms envisages that compensatory costs can be awarded in any suit or other proceedings, including an execution proceeding but excluding an appeal or a revision. In the instant case, the learned 2nd Joint District Judge was exercising powers under the appellate jurisdiction. Therefore, in passing the impugned order directing the petitioner to pay exemplary cost of Rs.500/- to the respondents does not stand to scrutiny and the learned 2nd Joint District Judge has committed jurisdictional error in passing the said order as he has passed the order in total disregard to the statutory provisions contained under Section 35-A of the Code.

17. Seen in the above context, the impugned order passed by the learned 2nd Joint District Judge is ex-facie illegal, unjust and without jurisdiction and the same deserves to be quashed and set aside by allowing this petition.

18. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned judgment and order dated 5.8.2004 rendered in C.A.F.O. No.15 of 1999 by the learned 2nd Joint District Judge, Sabarkantha at Himatnagar, including the direction to the trial court to frame preliminary issue in respect of the ownership of the suit land as well as ordering the petitioner to pay exemplary cost of Rs.500/- to the respondents within one month from the date of the order are hereby quashed and set aside, the result of which is that the order dated 12.1.1999 recorded below application Ex.35 in Regular Civil Suit No.88 of 1997 by the learned Civil Judge (S.D.)., Himatnagar directing the respondents to undergo civil imprisonment for one month for committing breach of the order of injunction is hereby restored. Rule is made absolute accordingly.

(A.M. Kapadia, J.)

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